IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISON

CASSANDRA L. LEE,	:	
	:	
Plaintiff,	:	
v.	:	**Case No.: 2:13-cv-109**
	:	
VIRGINIA BEACH SHERIFF'S OFFICE, et al.,	:	
	:	
	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Defendants, Virginia Beach Sheriff's Office ("VBSO"), Sheriff Kenneth Stolle (Sheriff Stolle"), Chief Deputy Marc F. Schuster ("Schuster"), Captain Elliot Ortiz ("Ortiz") and Helene Quick ("Quick"), by counsel, hereby submit this Memorandum of Law in Support of their Motion for Summary Judgment.[1] Plaintiff, a former Captain in the VBSO, alleges that she suffered discrimination and retaliation in violation of Title VII and the Virginia Human Rights Act ("the VHRA").

Plaintiff began working in the Sheriff's Office in 1990, during the administration of Sheriff Frank Drew, and continuing during Sheriff Lanteigne's administration. Although achieving the rank of Captain, during Sheriff Lanteigne's final term plaintiff performed deficiently as a commanding officer and had difficulty communicating with her superiors. Until her first EEOC Charge of Discrimination, in May 2009 ("First Charge"), filed just after an administrative reorganization and her lateral transfer between divisions, plaintiff never

[1] Plaintiff also names as defendants former Sheriff Paul Lanteigne and former Chief Deputy Dennis Free. According to PACER neither was served. In *Briggs v. Waters*, 455 F. Supp. 2d 508 (E.D.Va. 2006), this Court held that the current sheriff, in his official capacity, could be liable for Title VII violations committed during a previous sheriff's administration and allowed a deputy to bring his claims against the sheriff's office. Thus, defendants address plaintiff's Title VII claims allegedly arising during Sheriff Lanteigne's tenure.

complained of, or attributed her deficiencies or difficulties to race or gender discrimination or harassment. Following her First Charge, plaintiff remained with the Sheriff's Office through December 2009, when, after Sheriff Stolle's election in November 2009, he chose not to appoint plaintiff to his staff based on her performance deficiencies, dismal peer reviews, and hostile and unreceptive demeanor in interviews. Sheriff Stolle's decision was unrelated to plaintiff's First Charge, her race or gender. Nevertheless, his decision prompted plaintiff to file a Second Charge of Discrimination alleging retaliation, in July 2010.

For the reasons stated below, defendants ask the Court to enter summary judgment in their favor, and to dismiss plaintiff's claims as follows: (1) the Eleventh Amendment bars plaintiff's official capacity claims for monetary damages; (2) Title VII does not provide a remedy against individual employees; (3) the VHRA does not provide plaintiff a remedy; (4) plaintiff cannot establish discrimination based on hostile environment or disparate treatment; and (5) plaintiff cannot establish retaliation.

I. STATEMENT OF UNDISPUTED MATERIAL FACTS PURSUANT TO LOCAL RULE 56(B)

1. Sheriff Lanteigne served as the Sheriff of Virginia Beach through December 31, 2009. After Sheriff Stolle's election in November 2009, he began his term as the duly elected Sheriff of Virginia Beach on January 1, 2010. (Ex. 1, Affidavit of Sheriff Kenneth Stolle ("Stolle Aff."))

2. As of July 1, 2009, the start of the fiscal year, the VBSO employed 540 persons. (Ex. 1, Stolle Aff.)

3. Pursuant to Virginia law, the Sheriff may appoint such deputies, assistants and employees as are required to exercise the powers and duties conferred upon him by law. All

deputies and employees of the Sheriff's Office serve at the pleasure of and may be removed by the Sheriff. (Va. Code §§ 15.2-408, 15.2-1603)

4. Virginia law provides also that the Sheriff "may at the time he qualifies ... or thereafter appoint one or more deputies, who may discharge any of the official duties of [the Sheriff] during his continuance in office." Upon election of a new sheriff, prior appointees only continue employment if the new sheriff appoints them. The appointment decisions are within the sole discretion of the new sheriff. (Va. Code §§ 15.2-408, 15.2-1603)

5. At all times relevant to plaintiff's claims, Sheriff Lanteigne and then Sheriff Stolle, had appointed Schuster and Free as Chief Deputies, Ortiz as a Captain, and Quick as the Director of Human Resources. (Ex. 2, Affidavit of Mark Schuster ("Schuster Aff."))

6. Sheriff Frank Drew appointed plaintiff as a Correctional Officer in March 1990. In November 1992, she transitioned to a Deputy Sheriff. She became a Corporal in August 1993 and was promoted to Sergeant in July 1994. In April 1996 plaintiff was promoted to Lieutenant. Sheriff Lanteigne reappointed plaintiff when he took office and promoted plaintiff to Captain in October 2005. (Ex. 2, Schuster Aff.)

7. Captains fall under the supervision of one of the two Chief Deputies, depending on their assignment, and are responsible for supervising all subordinate personnel under their command. (Ex. 3, VBSO General Order No. 01-07-00)

8. When plaintiff became a Captain in 2005, she was transferred from the Professional Standards Office ("PSO") to Corrections. In October 2007, she was transferred from Corrections to Planning and Analysis. Effective May 1, 2008, plaintiff was transferred to Inmate Services and Records ("ISR"). As Captain of ISR, plaintiff's direct supervisor was Schuster, the Chief Deputy of Correctional Operations. (Ex. 2, Schuster Aff.)

9. ISR handles jail admissions and releases, jail records and jail programs. The ISR Captain supervises approximately 90-100 sworn and civilian employees, depending on VBSO needs and assignments. (Ex. 4, ISR Divisional Directive Manual, Table of Contents; Ex. 2, Schuster Aff.)

10. At all relevant times, the VBSO had an EEO Policy designed to "promote equal employment opportunities for Sheriff's Office appointees by providing a means for internal resolution of sexual harassment complaints, and/or discrimination complaints which are based on race, color, national origin, sex, age, religion, or disability." The Policy included a procedure and form for filing formal complaints. (Ex. 5, VBSO Policy and Procedure General Order #03-17-00) Plaintiff never filed an internal EEO complaint. (Ex. 1, Stolle Aff.; Ex. 2, Schuster Aff.)

11. Plaintiff's knowledge of the EEO policy and procedure is underscored by her attendance in February 2002 at a U.S. Dept. of Justice/FBI training titled, *Beyond Race and Gender*, with topics including Diversity in the Workplace, Equal Employment Opportunity, and Affirmative Action. (Ex. 6, Training Request, Outline)

Plaintiff's Performance Deficiencies as ISR Commanding Officer

12. In September 2008, four months after plaintiff took over the ISR Command, Chief Deputies Schuster and Free met with her regarding an erroneous release. Plaintiff blamed the error on inadequate staff training prior to her taking over as ISR Captain. Schuster recommended that plaintiff implement a comprehensive training program to ensure staff performance and advised her that as ISR Captain and commanding officer, she was responsible for training. Schuster also recommended that plaintiff develop a command review process to ensure the quality control of the inmate release process. (Ex. 2, Schuster Aff.)

13. Plaintiff failed to implement the recommended command review process, leading to another erroneous release in December 2008. Just weeks later, in January 2009, two federal detainees were erroneously released as time served, when they should have been returned to the U.S. Federal Penitentiary. (Ex. 2, Schuster Aff.)

14. In February 2009, following the erroneous releases of the federal detainees, Schuster and Sheriff Lanteigne met with plaintiff to discuss ongoing concerns about ISR operations. Plaintiff preempted that discussion, however, complaining that she felt picked on by Schuster. Specifically, plaintiff complained that there was a lack of communication between her and Schuster and that Schuster talked to other people more than her. In response, Sheriff Lanteigne encouraged plaintiff and Schuster to communicate via email, and directed them to copy him on all correspondence to ensure appropriate communications. Schuster immediately sought to better his communication with plaintiff by asking her for ideas on improved communication. (Ex. 2, Schuster Aff.; Ex. 7, Emails)

During this conversation plaintiff never claimed or even suggested that she was the subject of race or gender discrimination or harassment, or that the lack of communication related to her race or gender. Nor did plaintiff file an internal EEO complaint. (Ex. 2, Schuster Aff.)

15. PSO investigations regarding the release of the federal detainees revealed that the ISR Sergeant, Master Deputy IIs and Civilian Clerks had no formal training regarding processing of inmates. When questioned, plaintiff relied on the Sheriff's Office allowance for on-the-job training. However, Sheriff's Office policy requires an immediate supervisor to monitor on-the-job training, and that a report is sent to the training office indicating the subject, method and number of hours for each individual completing the training. The PSO investigations reflected that the last formal ISR training occurred in December 2007, prior to plaintiff's taking command,

and that during plaintiff's tenure, there had been no formal training and no documentation of monitored on-the-job training was forwarded to the training office. (Ex. 2, Schuster Aff.; Ex. 8, Findings re: releases; Ex. 9, General Order No. 03-01-00)

16. During plaintiff's tenure in ISR, three other erroneous releases occurred, prior to those resulting in the PSO investigations. In those instances, ignoring established directives requiring that she generate a critical incident report and report the erroneous releases to PSO for investigation, plaintiff investigated these other releases herself, thus failing to report timely the emergency situations to her chain of command and acting contrary to established directives. (Ex. 10, General Order No. 07-04-01; Ex. 11, March 12, 2009 Memorandum; Ex. 2, Schuster Aff.)

17. During plaintiff's tenure in ISR, she did not require her staff to utilize a chronological log implemented prior to her taking command, intended to track the timing of release processes and the reasons for delays. The log tracked performance and identified operating issues that needed attention. Plaintiff's failure resulted in the Sheriff's Office receiving complaints from bondsmen about delays in inmate releases. (Ex. 11, March 12, 2009 Memorandum; Ex. 2, Schuster Aff.)

18. During plaintiff's tenure in ISR, her staff was not using the biometric fingerprint verification system for the weekender program, to ensure that the proper person presented to serve his/her weekend sentence. Schuster determined that plaintiff failed to report accurately to her superiors that ISR staff was not using the system, blaming it falsely on an IT problem, and that plaintiff exhibited a lack of oversight of the weekender program, resulting in her lack of knowledge of her own staff's work. (Ex. 11, March 12, 2009 Memorandum; Ex. 2, Schuster Aff.)

19. In January 2009, Schuster required all of the Captains under his command to forward to him a staffing study for his use in presenting to Sheriff Lanteigne a review of staffing needs. Plaintiff was the only Captain who did not provide the requested information, even after a second request. Schuster had to obtain the necessary information from the Lieutenants under plaintiff. (Ex. 11, March 12, 2009 Memorandum; Ex. 2, Schuster Aff.)

20. Plaintiff disregarded a directive from Schuster that an inmate be temporarily assigned to a housing unit in IRS in the interest of the inmate's and the staff's safety and security. At the time, plaintiff did not address any concerns regarding the chain of command. (Ex. 2, Schuster Aff.)

21. Upon taking command at ISR, plaintiff failed to maintain monthly tracking of the inmates falling under Immigration and Customs Enforcement (ICE) agency jurisdiction. As a result, monthly reports the Sheriff's Office was required to maintain were not provided. While the process was later implemented, the ICE reports had to be re-created for the intervening period. (Ex. 2, Schuster Aff.)

22. Based on the series of erroneous releases, the failure to follow directives and discrepancies found in property room records in regular inspections, Sheriff Lanteigne directed Schuster to correct the issues plaguing ISR. Schuster gathered personnel with experience in ISR to review all processes in order to elevate the quality of service. Schuster initiated inspections of various ISR processes, including the physical layout of intake, booking and records, staffing and peak workload times, admit and release procedures, and property room procedures. The audits resulted in proposals to improve ISR processes. Following the review of ISR processes, Sheriff Lanteigne decided to audit the other VBSO divisions in the same way, by putting together an

experienced team to evaluate the quality of service. (Ex. 2, Schuster Aff.; Ex. 12, March 25, 2009 Report)

23. At the conclusion of the audit and the PSO investigations, Schuster determined, and plaintiff confirmed, that the deputies and clerks never received training on Writs of Habeas Corpus. Plaintiff admitted that she had never implemented a formal training process, despite Schuster's earlier request. (Ex. 2, Schuster Aff.; Ex. 8, Findings re: releases)

24. Schuster believed that the responsibility for the erroneous releases lay with the senior command officers -- plaintiff and her Lieutenants -- for failing to ensure staff training. Schuster shared his appraisal with Chief Deputy Free, who independently reviewed the files and agreed. Free made the decision that the complaint be founded and suggested the establishment and implementation of formal training in ISR. (Ex. 8, Findings re: releases; Ex. 2, Schuster Aff.)

25. Plaintiff did not receive any formal discipline resulting from the PSO investigations of the erroneous releases or the audit. She was informed of the results, which concluded that there was a failure of the senior command staff, including plaintiff, Lt. Hightower, a white male, and Lt. Culanding, a Filipino male. (Ex. 2, Schuster Aff.)

26. During plaintiff's command from May 2008 through May 2009, there were 68 internal investigations of incidents in ISR. Out of those investigations, seven involved the erroneous releases mentioned above. (Ex. 2, Schuster Aff.)

27. Captain Ortiz, a Hispanic male, and Captain Kiefer, a white male, were in charge of the ISR command prior to plaintiff. (Ex. 2, Schuster Aff.)

28. Captain Ortiz commanded ISR from March 2005 through May 2006. During that time, there were 14 internal investigations of incidents in ISR. Out of those investigations, three involved erroneous releases. In each instance it was determined that the appropriate policies and

procedures were in place, but the individual deputies did not follow those policies and procedures. The offending deputies were disciplined. There was no determination that the erroneous releases resulted from a failure of Captain Ortiz's command. (Ex. 2, Schuster Aff.)

29. Captain Kiefer commanded ISR from June 2006 through April 2008. During that time, there were 64 internal investigations of incidents in ISR. Out of those investigations, eight involved erroneous releases. In each instance it was determined that the appropriate policies and procedures were in place, but the individual deputies did not follow those policies and procedures. The offending deputies were disciplined. There was no determination that the erroneous releases resulted from a failure of Captain Kiefer's command. (Ex. 2, Schuster Aff.)

30. During Kiefer's and Ortiz's commands, neither exhibited the type and number of performance deficiencies attributed to plaintiff. (Ex. 2, Schuster Aff.)

31. Every three years, on a random, rotating basis, every VBSO division is inspected for purposes of the Virginia Beach Correctional Center's accreditation through the Virginia Law Enforcement Association Coalition ("VALEAC"). VALEAC requires across the board inspections in divisions including: Property, Courts, Training, Civil Process, Internal Affairs, Corrections and ISR. Captain Ortiz and Captain Kiefer, along with plaintiff, were subject to any inspections arising during their ISR commands. (Ex. 2, Schuster Aff.)

32. At all times relevant, VALEAC also required quarterly and randomly scheduled property room inspections to ensure that policies and procedures were followed and that inmate property was accounted for. These regular inspections occurred during Captain Ortiz's, Captain Kiefer's, and plaintiff's ISR commands and written reports following each inspection identified discrepancies. (Ex. 2, Schuster Aff.)

33. In addition to the VALEAC required inspections, PSO conducts random inspections of each VBSO division, usually once per year in each division. If the PSO inspection occurs at or about the same time as the quarterly VALEAC inspection, the PSO inspection will serve both purposes. These inspections occurred during Captain Ortiz's, Captain Kiefer's and plaintiff's commands. (Ex. 2, Schuster Aff.)

34. During Captain Ortiz's tenure in ISR, his command varied between 100 and 94 sworn and civilian employees. During Captain Kiefer's tenure in ISR, his command varied between 100 and 95 sworn and civilian employees. During plaintiff's tenure, her command varied between 95 and 92 sworn and civilian employees. (Ex. 2, Schuster Aff.)

Sheriff Lanteigne's Reorganization of the Sheriff's Office

35. In the spring of 2009, based upon the results of the PSO investigations, audit, additional ISR operational issues, and the needs of the Sheriff's Office, Sheriff Lanteigne reassigned senior leadership, reorganized ISR and reverted to a former administrative structure placing a Captain in charge of the Civil Process Division. Sheriff Lanteigne made all decisions regarding transfers, and based decisions on staffing and service needs. Sheriff Lanteigne historically attempted a two-year rotation for Captains, to ensure that more than one person had knowledge of the multiple divisions' policies and procedures. However, retirements, promotions, reorganizations, grant money, service needs, injuries/illnesses, and other staffing issues also affected transfers. (Ex. 2, Schuster Aff.)

36. When Civil Process was located at the courthouse, one Captain oversaw Courts and Civil Process, with a Lieutenant assigned to Civil Process. When Civil Process relocated back to the jail in 2009, Sheriff Lanteigne decided to have a Captain command Civil Process, as

had been done previously when Civil Process was located at the jail, and which freed up a Lieutenant position for ISR. (Ex. 2, Schuster Aff.)

37. The reorganization resulted in the transfer of three Captains: plaintiff (black female); Captain Crean (white female); and Captain Wilke (white male). Six Lieutenants were transferred as well: Lt. Culanding, (Filipino male), Lt. Harvey (white female), Lt. Hightower (white male), Lt. Lanciaux (white male), Lt. Manigo (black male) and Lt. Richie (white female). (Ex. 13, April 30, 2009 Transfer Memorandum)

38. Sheriff Lanteigne transferred plaintiff laterally from ISR to Civil Process; she did not suffer a reduction in salary, benefits or other terms or conditions of employment. She remained a Captain and a commanding officer of a major division of the Sheriff's Office, with continued program, operating and supervisory responsibilities. Chief Deputy Free oversaw the Civil Process Division; thus, after the transfer plaintiff no longer reported to Schuster. (Ex. 14, Civil Process Policies and Procedures Manual; Table of Contents; Ex. 2, Schuster Aff.)

39. The Captain in command of Civil Process oversees all support operations in the administration and execution of civil and other legal processes with the City, and supervises all Civil Process personnel, approximately 22 sworn and civilian employees. (Ex. 15, Civil Process Staffing Report; Ex. 2, Schuster Aff.)

40. All of the transferred employees learned of the change on or about April 30, 2009, with the transfer effective June 1, 2009. Plaintiff filed her initial EEO Charge of Discrimination, for the first time complaining of race and gender discrimination, on May 29, 2009. Plaintiff's transfer from ISR to Civil Process pre-dated and was not in response to allegations of discrimination. (Ex. 13, April 30, 2009 Transfer Memorandum; Ex. 2, Schuster Aff.)

Sheriff Stolle's Decision not to Appoint Plaintiff

41. Sheriff Stolle was elected in November 2009. In December 2009, anticipating taking office on January 1, 2010, Sheriff Stolle had to make appointment decisions. He appointed all of the deputies, master deputies and sergeants who served as Sheriff Lanteigne's appointees. However, Sheriff Stolle decided that because higher-ranking officers were policymakers and leaders in the Sheriff's Office, he wanted to gain insight into each officer's aptitude, character and accountability, to determine if their values and vision comported with his own. Sheriff Stolle implemented a process by which he evaluated the two Chief Deputies, six Captains, and ten Lieutenants, which included a review of resumes, personnel files and PSO investigations, evaluations, peer reviews and interviews. (Ex. 1, Stolle Aff.)

42. Employing this process, Sheriff Stolle reviewed plaintiff's personnel file, including the numerous performance deficiencies that arose during her ISR command. Upon further review, Sheriff Stolle determined that plaintiff repeatedly held herself not accountable for the ISR problems, refusing to accept responsibility for a failure of command. Deeming accountability an essential attribute for his leadership team, Sheriff Stolle was concerned about plaintiff's suitability. (Ex. 1, Stolle Aff.)

43. Sheriff Stolle interviewed plaintiff on December 2, 2009, asking the same two questions he asked each Captain and Lieutenant: what he/she saw as the greatest challenge in the Sheriff's Office; and what improvements he/she would recommend. Plaintiff failed to answer these questions; rather, she criticized the VBSO. (Ex. 1, Stolle Aff.)

44. At this interview, plaintiff also reaffirmed her refusal to work with or for the two Chief Deputies, Schuster and Free. She complained that Schuster made critical remarks about her and her command staff, and claimed that Schuster did not pay her as much attention as he

paid to other Captains. Plaintiff also felt that Schuster and Free had attacked her at a goal-setting meeting that Sheriff Stolle attended; Sheriff Stolle believed the tenor of the meeting to be cordial and positive and devoid of comments that could be interprete . as offensive. Plaintiff informed Sheriff Stolle that she had a pending Charge of Discrimination and attempted to discuss it; Sheriff Stolle advised plaintiff that he had not read the Charge and that it had no bearing on his evaluation, and he did not engage plaintiff in a discussion of the Charge. Rather than explore solutions, plaintiff declared it was too late to rectify the situation with Schuster and Free. (Ex. 1, Stolle Aff.)

45. Plaintiff also complained to Sheriff Stolle that she was offended not to be asked to work on his campaign. Sheriff Stolle was shocked by her personal accusation, as they had never before met, and explained that no current appointee had been solicited to participate. Rather, all participation was voluntary. (Ex. 1, Stolle Aff.)

46. Although taken aback by plaintiff's defensive, negative and aggressive attitude during the interview, Sheriff Stolle understood that she was just months away from eligibility for full retirement and wanted to ensure that she had every opportunity to gain that benefit. Sheriff Stolle proposed another meeting to allow plaintiff to arrive at a solution with regard to working within the chain of command and another opportunity to improve her inferior interview performance. (Ex. 1, Stolle Aff.)

47. Following the initial interviews, Sheriff Stolle conducted the peer review. He instructed each of the six Captains to rank his/her peers on a scale of one to six, with one being the best, based upon knowledge, skill, and abilities. Each of the other five Captains ranked plaintiff last. The peer reviews were wholly independent of Sheriff Stolle, Chief Deputies

Schuster or Free, and their opinions regarding the Captains' abilities, and were unrelated to plaintiff's gender, race or claims of discrimination. (Ex. 1, Stolle Aff.)

48. On December 8, 2009, Sheriff Stolle conducted a second interview with plaintiff via telephone. Plaintiff continued to decline steadfastly to work with the Chief Deputies and did not offer how to rectify the rift. Plaintiff did not in any way to attribute the rift to race or gender discrimination, rationalizing that people dislike her because she is brutally honest. After going round, plaintiff finally reversed her position and conceded she could work with Schuster and Free. Based on her reversal, Sheriff Stolle deemed the rift a non-issue and removed it from his calculus. (Ex. 1, Stolle Aff.)

49. Sheriff Stolle ultimately determined not to appoint plaintiff, basing his decision on plaintiff's performance, lack of accountability and failure to accept responsibility, her peers' negative reviews, and her hostile and unreceptive demeanor in two interviews. (Ex. 1, Stolle Aff.)

50. Plaintiff's race, gender, or allegations of discrimination had no bearing on Sheriff Stolle's decision. Sheriff Stolle appointed two female Captains, Erin Crean and Victoria Thomson on January 1, 2010, Sheriff Stolle promoted Lori Harris, an African-American female, to Captain and assigned her to Civil Process. (Ex. 1, Stolle Aff.; Ex. 16, December 16, 2009 Promotion/Transfer List)

II. ARGUMENT

A. Summary Judgment Standard

Summary judgment is appropriate in the absence of any genuine issue of material fact. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 255 (1986). Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, such as

where the non-moving party fails to make a sufficient showing on an essential element of the claims on which he bears the burden of proof, the moving party prevails. *Anderson*, 477 U.S. at 248-49; *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). While the court draws all inferences in favor of the non-moving party, speculative assertions will not suffice. *Ross v. Commc'ns Satellite Corp.*, 759 F.2d 355, 364 (4th Cir. 1989). Under this standard, defendants are entitled to judgment on plaintiff's Title VII and VHRA claims.

B. The Eleventh Amendment Bars Plaintiff's Official Capacity Claims

Plaintiff sues Sheriff Stolle, Schuster, Ortiz and Quick individually and in his/her official capacity; however, the Eleventh Amendment bars plaintiff's official capacity claims seeking money damages against these defendants. "The Eleventh Amendment limits the Article III jurisdiction of the federal courts to hear cases against State and state officers acting in their official capacities." *Kitchen v. Upshaw*, 286 F.3d 179, 183-84 (4th Cir. 2002). A suit for damages against a sheriff in an official capacity, like other Virginia constitutional officers, is considered a suit against the state and is barred by the Eleventh Amendment.

As this Court recently held, "federal district courts applying Virginia law have repeatedly held that Virginia Sheriffs, and their deputies, are 'state officers' for the purpose of the Eleventh Amendment." *Vollette v. Watson*, No. 2:21-cv-231, 2013 WL 1314152, at *4 (E.D.Va., Apr. 1, 2013) (holding Eleventh Amendment precludes all but equitable relief against sheriff); *see also Smith v. McCarthy,* 349 F. App'x 851, 858 n.11 (4th Cir. 2009) (unpublished) ("[T]he district court did not err in dismissing the [plaintiffs'] claims against [the deputy sheriffs] in their official capacities, as they are afforded immunity by the Eleventh Amendment."); *Harris v. Hayter,* 970 F. Supp. 500, 502 (W.D.Va. 1997) (finding Eleventh Amendment immunity for sheriff's deputies); *Blankenship v. Warren Cnty.,* 931 F. Supp. 447, 449 (W.D.Va. 1996) (same). Thus,

plaintiff's official capacity claims against Sheriff Stolle, Schuster, Ortiz, and Quick must be dismissed as a matter of law.

C. Title VII does not provide a Remedy against Individual Employees

Plaintiff's claims against Schuster, Ortiz, and Quick must be dismissed as Title VII does not provide plaintiff a remedy against them in their individual capacities. The enforcement provisions of Title VII permit actions against only an "employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C. § 2000e–5(b). Title VII defines an "employer", in pertinent part, as a "person engaged in an industry affecting commerce who has fifteen or more employees." 42 U.S.C. § 2000e (b). The Fourth Circuit has "expressly held that Title VII does not provide a remedy against individual defendants who do not qualify as 'employers.'" *Baird v. Rose,* 192 F.3d 462, 472 (4th Cir. 1999) (citing *Lissau v. S. Food Serv., Inc.,* 159 F.3d 177, 180–81 (4th Cir. 1998) (holding that supervisors cannot be held liable in their individual capacities under Title VII because they do not fit within the definition of an employer)). Thus, plaintiff's claims against defendants Schuster, Ortiz, and Quick in their individual capacities must be dismissed as a matter of law.

D. The VHRA does not Provide Plaintiff a Remedy

Plaintiff cannot state a claim pursuant to the VHRA. By law, the VHRA only creates a private cause of action against employers with more than five but fewer than fifteen employees. Va. Code § 2.2-3903(B). Plaintiff cannot dispute that in fiscal year 2009 the Virginia Beach Sheriff's Office employed 540 persons. *See Blankenship v. City of Portsmouth*, 372 F. Supp.2d 496, 501 (E.D.Va. 2005) (dismissing VHRA claim where employer had hundreds of employees); *Wilson v. Shaw Constructors, Inc.*, No. 2:11-cv-00028, 2012 WL 6110494, at *4 (W.D.Va. Dec. 10, 2012) (dismissing VHRA claim where plaintiff could not dispute that employer employed

more than fifteen people). Plaintiff's claims under the VHRA must be dismissed as a matter of law.

E. Plaintiff Cannot Establish Discrimination based on Race or Gender

1. Burden of Proof

Absent direct evidence of discrimination or retaliation, the *McDonnell Douglas* shifting burden paradigm applies. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). First, plaintiff must state a prima facie case for discrimination or retaliation. If she succeeds, the burden shifts to defendants to articulate legitimate nondiscriminatory reasons for the adverse employment action. Third, to overcome defendants' nondiscriminatory reasons, plaintiff must prove by a preponderance of the evidence that the reasons given were a pretext for discrimination. *Id.* at 802 n.12; *see also Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000).

In considering the employer's reasons, it is not necessary to determine "whether the reason was wise, fair, or even correct, ultimately, so long as it truly was the reason for the plaintiff's" adverse employment action. *Hawkins v. Pepsico*, 203 F.3d 274, 279 (4th Cir. 2000) (citing *DeJarnette v. Corning, Inc.*, 133 F.3d 293, 299 (4th Cir. 1998)). The Fourth Circuit notes that, "this Court does not sit as a kind of super-personnel department weighing the prudence of employment decisions made by firms charged with employment discrimination." *DeJarnette*, 133 F.3d at 299. Further, the Court recognizes that the employer's perception is critical, *see Hawkins*, 203 F.3d at 280, and "the importance of giving an employer the latitude and autonomy to make business decisions, including workplace reorganization," *Henson v. Liggett Grp., Inc.*, 61 F.3d 270, 277 (4th Cir. 1995).

2. Plaintiff Cannot Prevail on her Hostile Environment Claim

Plaintiff cannot establish a hostile environment claim. In order to establish a prima facie case of hostile environment discrimination, plaintiff must demonstrate that the alleged harassment was (1) unwelcome; (2) based on race or gender; (3) sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere, and (4) it was imputable on some factual basis to the employer. *Spicer v. Commonwealth of Va., Dep't of Corr.*, 66 F.3d 705, 709-10 (4th Cir. 1995) (en banc) (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993)); *see also Ocheltree v. Scollon Prods., Inc.*, 335 F.3d 325, 331 (4th Cir. 2003) (*en banc*); *Swentek v. U.S. Air*, 830 F.2d 552, 557 (4th Cir. 1987)).

With regard to the severity of the conduct, the degree of hostility or abuse must be determined by examining the totality of the circumstances. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993). Relevant considerations "may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliation, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Id.* "To be actionable, the conduct must create an objectively hostile or abusive work environment, and the victim must also perceive the environment to be abusive." *Spriggs*, 242 F.3d at 184 (citing *Lissau v. S. Food Serv., Inc.*, 159 F.3d 177, 183 (4th Cir. 1998)); *see also Joyner v. Fillion*, 17 F. Supp. 2d 519, 522 (E.D.Va. 1998).

To sustain her burden, plaintiff must prove "that [her] work environment was so pervaded by racial [and/or sexual] harassment as to alter the terms and conditions of [her] employment." *Joyner*, 17 F. Supp. 2d at 522-23 (citation omitted). In other words, the workplace must be "permeated with discriminatory intimidation, ridicule and insult ... that is sufficiently severe or pervasive to alter conditions of the victim's employment and create an abusive working

environment." *Harris*, 510 U.S. at 21 (internal citations and quotations omitted). "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." *Joyner*, 17 F. Supp. 2d at 523 (citing *Faragher v. City of Boca Raton*, 524 U.S. 775, 807-08 (1998)).

As to whether the conduct is imputable to the employer, liability for workplace harassment depends on the status of the harasser. In order to impose liability on the employer for the actions of a co-worker, "the employer is liable only if it was negligent in controlling working conditions." *Vance v. Ball State Univ.*, ___ S. Ct. ___, No. 11-556, 2013 WL 3155228, at *3 (June 24, 2013). "Where the hostile work environment is predicated on the abusive behaviors of coworkers, employer liability can only attach where the complaining employee has complained directly to the employer and the employer has failed to adequately respond." *Henderson v. Labor Finders of Va., Inc.*, No. 3:12cv600, 2013 WL 1352158, at *6 (E.D.Va. April, 2, 2013) (citing *Barrett v. Applied Radian Energy Corp.*, 240 F.3d 262, 267 (4th Cir. 2001)). In other words, "the employer may be liable in negligence if he knew or should have known about the harassment and failed to take effective action to stop it." *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 334 (4th Cir. 2011).

However, if the harasser is a supervisor, and "the supervisor's harassment culminates in a tangible employment action, the employer is strictly liable." *Id.* In *Vance*, the Supreme Court recently defined s a "supervisor" under the Title VII framework:

> [A]n employer may be vicariously liable for an employee's unlawful harassment only when the employer has empowered that employee to take tangible employment actions against the victim, *i.e.*, to effect a "significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities or a decision causing a significant change in benefits."

Vance, 2013 WL 3155228 at *7.

With regard to vicarious liability for a supervisor's action, "[i]f the plaintiff did not suffer a tangible employment action, the employer has available to it an affirmative defense that may protect it from liability or damages." *Whitten v. Fred's, Inc.*, 601 F.3d 231, 243 (4th Cir. 2010) (citing *Faragher*, 524 U.S. at 807-08; *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998)). The defense is established with proof that (1) the employer exercised reasonable care to prevent and correct any harassment behavior and (2) the plaintiff unreasonably failed to take advantage of the preventive or corrective opportunities that the employer provided." *Vance* 2013 WL 3155228 at *3 (citing *Faragher*, 524 U.S. at 807; *Ellerth*, 524 U.S. at 765).

Here, plaintiff cannot establish a prima case of hostile environment discrimination as she fails to allege any incidents, actions or comments based on her race or gender, or a severe or pervasive discriminatory environment. First, plaintiff does not describe any "discriminatory intimidation, ridicule and insult." *Harris*, 510 U.S. at 23. Rather, plaintiff alleges only generally that individual defendants engaged in discriminatory actions and utterances. The only specific conduct plaintiff mentions regards her differences with Schuster. However, for a hostile environment claim, it is not enough for plaintiff to allege generally that, because she was a black female, or that Schuster favored his "boys" or a purported "paramour," she was subjected to a hostile environment. *See* Amended Complaint, ¶¶ 20-21. Plaintiff's complaints about Schuster's attitude toward her "are without a hint of racial [or gender] significance." *Hawkins v. Pepsico, Inc.*, 203 F.3d 274, 281 (4th Cir. 2000). Plaintiff complained to Sheriff Lanteigne only about her communication difficulties with Schuster. As the Fourth Circuit holds, even if a supervisor "harbored some personal dislike of [the plaintiff] that made [the plaintiff's] job more difficult or stressful, '[a]n employer is not required to like his employees.'" *Id.* (quoting *Williams v. Cerberonics, Inc.* 871 F.2d 452, 457 (4th Cir. 1989)). Further, general complaints of rude

treatment are insufficient to support a hostile environment claim. *See Baqir v. Principi*, 434 F.3d 733, 747 (4th Cir. 2006). Plaintiff fails to allege any conduct specifically directed at her because of her gender or race.

Second, even if plaintiff had alleged a sufficient hostile environment she cannot impute liability based on Schuster's conduct. As defined in *Vance v. Ball State University*, Schuster was not plaintiff's supervisor. He was not empowered to take tangible employment actions against plaintiff. Virginia law firmly places the authority to effect hiring, firing, promotions, transfers, reassignments, or changes in benefits only with the Sheriff. *See Ellerth*, 524 U.S. at 761; Va. Code §§ 15.2-408, 15.2-1603. Nor can plaintiff impose liability against Sheriff Lanteigne for negligence, based on the actions of her co-workers. Plaintiff did not complain of race or gender based harassment when she met with Schuster and Sheriff Lanteigne in February 2009, nor did plaintiff follow the VBSO EEO policy and procedure or file a complaint of discrimination.

Further, plaintiff cannot establish that she suffered a tangible employment action. Significantly, the record reflects that plaintiff's first complaint or even mention of race or gender discrimination was in her May 29, 2009 EEO Charge of Discrimination. Plaintiff filed her Charge four months after she complained about Schuster and one month after the April 30, 2009 announcement of the VBSO reorganization and plaintiff's assignment to Civil Process. It is undisputed that plaintiff was transferred laterally from ISR to Civil Process, without any change in rank, salary, or the terms and conditions of employment. Absent an adverse employment action, the affirmative defense outlined above becomes relevant: that the VBSO "exercised reasonable care to prevent and correct promptly any sexually harassing behavior" and that plaintiff "unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise." *Faragher*, 524 U.S. at 807.

As to the first element, at all relevant times, the VBSO had an EEO policy complete with a complaint procedure. Where "there is no evidence that an employer adopted or administered an anti-harassment policy in bad faith or that the policy was otherwise defective or dysfunctional, the existence of such a policy militates strongly in favor of a conclusion that the employer exercised reasonable care to prevent and promptly correct sexual harassment." *Brown v. Perry*, 184 F.3d 388, 396 (4th Cir. 1999). Further, plaintiff did not register a complaint based on gender or race discrimination in February 2009; rather, she complained of her lack of communication with Schuster. Although there was no discrimination complaint, either formal or otherwise, to address, let alone to investigate, Sheriff Lanteigne addressed plaintiff's concerns by requesting that she and Schuster communicate by email and copy the Sheriff, to promote improved communication.

With regard to the second element, "proof that a plaintiff employee failed to follow a complaint procedure will normally suffice to satisfy the employer's burden under the second element of the defense." *Brown*, 184 F.3d at 395. Here, along with the undisputed fact that plaintiff did not complain in February 2009 that Schuster engaged in gender or race discrimination, plaintiff cannot dispute her failure to file a complaint pursuant to the internal EEO Policy and Procedure. A reasonable factfinder could conclude only that plaintiff "unreasonably failed to take advantage of any preventive or corrective opportunities." *Faragher*, 524 U.S. at 807.

In sum, plaintiff fails to allege a sufficiently severe or pervasive discriminatory environment and cannot establish that she suffered a tangible employment action. Further, Sheriff Lanteigne attempted to ameliorate plaintiff's differences with Schuster, and plaintiff

failed to take advantage of the Sheriff's Office internal EEO policy and procedure. Plaintiff's hostile environment claim is not plausible.

3. Plaintiff Cannot Prevail on her Disparate Treatment Claim

Plaintiff claims that she was treated differently from her peers who held the ISR position before her. Amended Complaint, ¶ 24. To establish a prima facie claim of discrimination based on disparate treatment, plaintiff must establish (1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class. *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010), *aff'd*, 132 S. Ct. 1327 (2012).

Here, while plaintiff is a member of a protected class, she cannot establish that she performed satisfactorily, suffered an adverse employment action or received different treatment. First, as set forth in the undisputed facts, plaintiff cannot establish a satisfactory job performance. Plaintiff took charge as the commanding officer of ISR on May 1, 2008. Over the succeeding months, there were erroneous releases in September 2008, and December 2008, and two in January 2009, all subject to investigation. In addition, there were three additional erroneous releases that plaintiff failed to report to her chain of command and investigated on her own, contrary to established VSBO policy and procedure. The erroneous releases, coupled with multiple performance deficiencies, led to Sheriff Lanteigne's ordering Schuster to determine where the failures were in ISR. Schuster gathered personnel with experience in ISR to review all processes in order to elevate the quality of service. The audit was meant to improve the division.

Second, plaintiff cannot establish an adverse employment action based upon her allegations. Workplace reorganization is not a prohibited if the reorganization is done for legitimate, rather than discriminatory, reasons. As the facts reveal, plaintiff was not demoted.

Her move to Civil Process was a lateral transfer, with the same pay, benefits and conditions of employment. Nor did plaintiff receive any disciplinary action arising from the erroneous releases.

Further, to establish disparate treatment, plaintiff must point to similarly-situated employees who engaged in the same conduct and were treated differently. "Such a showing would include evidence that the employees dealt with the same supervisor, were subject to the same standards and engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Haywood v. Locke*, 387 F. App'x 355, 359 (4th Cir. 2010). In support of her claim, plaintiff alleges that "white male and Hispanic male co-workers" were never subjected to an audit, reprimand, transfer, demotion, or termination (non-reappointment). Amended Complaint, ¶¶ 24-25.

The record belies plaintiff's claim of disparate treatment. Captain Ortiz, a Hispanic male, and Captain Kiefer, a white male, were in charge of ISR prior to plaintiff. Like plaintiff, Ortiz and Kiefer were Sheriff Lanteigne's appointees and subject to the same standards of conduct, policies and procedures. As captains, they, too, were subject to Sheriff Lanteigne's personnel decisions, including their assignment to and transfer among VBSO divisions, and variations in the number of staff under the ISR command, depending on VBSO needs and assignments.

Like plaintiff, Ortiz and Kiefer were also subject to many internal investigations of incidents occurring in ISR during their commands, including investigations of erroneous releases. The erroneous releases occurring during plaintiff's command arose directly from a failure by plaintiff and her two lieutenants. Plaintiff was not disciplined for that failure. The erroneous releases occurring during Ortiz's and Kiefer's commands arose from the failures of

individual deputies to follow established policies and procedures, not from a failure of command. Those deputies were disciplined.

Further, each captain was subject to having his/her command inspected for purposes of the jail's three-year VALEAC accreditation cycle, VALEAC quarterly property room inspections and annual PSO inspections. Plaintiff cannot rely on the ISR audit, prompted by performance deficiencies in her command and Sheriff Lanteigne's concerns about ISR processes, to claim disparate treatment. Neither similar nor compounded deficiencies arose during the other captains' commands. Moreover, the purpose of the audit was to improve the quality of service. In fact, the success of the ISR audit prompted Sheriff Lanteigne to conduct similar audits of each division. Plaintiff was not disciplined as a result of the audit or any particular finding.

Even assuming *arguendo* plaintiff could establish that she performed satisfactorily, suffered an adverse action, and mounted a prima facie case of disparate treatment, she cannot meet her burden under the *McDonell-Douglas* test. The record reveals legitimate nondiscriminatory reasons for the review of ISR practices and plaintiff's transfer to Civil Process. Plaintiff offers no evidence of pretext. "[A] plaintiff's own assertions of discrimination in and of themselves are insufficient to counter substantial evidence of legitimate nondiscriminatory reasons for an adverse employment action." *Williams*, 871 F.2d at 456. Plaintiff offers no evidentiary support for a disparate treatment claim.

F. Plaintiff Cannot Establish Retaliation

Plaintiff alleges also that she suffered retaliation after complaining and filing her First Charge during Sheriff Lanteigne's tenure, and when Sheriff Stolle decided not to appoint her to his staff. To establish a prima facie case of retaliation, plaintiff must show that: (1) she engaged in a protected activity; (2) the employer acted adversely against her; and (3) there was a causal

connection between the protected activity and the asserted adverse action. *Ziskie v. Mineta,* 547 F.3d 220, 229 (4th Cir.2008); *Holland v. Wash. Homes, Inc.,* 487 F.3d 208, 218 (4th Cir. 2007). The Supreme Court recently imposed a heightened causation standard for retaliation claims, in contrast to the lesser "motivating factor" standard employed in discrimination claims. "Title VII retaliation claims require proof that the desire to retaliate was the but-for cause of the challenged employment action." *Univ. of Texas Sw. Med. Ctr. v. Nassar,* ___ S. Ct. ___, No. 12-484, 2013 WL 3155234, at *10 (June 24, 2013).

With regard to her first allegation, plaintiff fails to establish the requisite adverse action or but-for causal connection. Plaintiff claims that in February 2009 she made a complaint to Sheriff Lanteigne regarding Schuster and Free. The record reveals that at a meeting scheduled to discuss concerns about ISR operations, plaintiff informed Sheriff Lanteigne that she felt Schuster was picking on her, asserting a lack of communication between them. In response to her claim, Sheriff Lanteigne encouraged communication by email, and asked plaintiff and Schuster to copy him on all correspondence to ensure that appropriate communications were occurring. Plaintiff did not base her concern on race or gender discrimination or harassment. Nor did plaintiff file an internal EEO complaint alleging race or gender discrimination, as required by the VBSO EEO policy. *See Bozeman v. Per-Se Technologies, Inc.*, 456 F. Supp. 2d 1282, 1346 (N.D. Ga. 2006) (courts have generally held that shunning or ostracism by co-workers or supervisors is not enough to constitute an adverse employment action).

Sheriff Lanteigne announced his reorganization of senior leadership on April 30, 2009, one month *before* plaintiff's May 29, 2009 Charge of Discrimination, so her transfer could not have been in retaliation for filing the Charge. Plaintiff's First Charge, filed just a day before the effective date of the reorganization, was the first time in any form or context that plaintiff

complained of gender or race discrimination. As this Court recently stated, "one cannot retaliate against an employee for engaging in protected activity until the employee actually engages in the protected activity." *Smith v. Sec'y of the Army*, No. 1:11-cv-724, 2012 WL 3866487, at *4 (E.D.Va. Sept. 5, 2012) (citing Am. Jr. Job Discrimination § 247 ("A lack of causation may be shown where the adverse action occurred before the claimant began to assert [her] rights, or before the employer learned of the protected activity.")). In *Smith*, the Court dismissed the plaintiff's retaliation claim on summary judgment where "many of the adverse actions were taken or contemplated prior to the protected activity." *Id.* Here, Sheriff Lanteigne reorganized the VBSO administration prior to plaintiff's First Charge. On this basis alone, plaintiff cannot establish that her Charge was the but-for cause of the transfer.

Moreover, plaintiff sustained a lateral move, with no change in the terms or conditions of employment. She remained at the rank of Captain, in charge of a VBSO division, with the same salary and benefits. *See Lewis v. City of Virginia Beach Sheriff's Office*, 409 F. Supp. 2d 696, 706 (E.D.Va. 2006 (noting that transfer of deputy within the VBSO "would have no impact on [his] rank, salary, or employment benefits," and that "reassignments and transfers are a routine part of the normal operations of the Sheriff's Office.").

With regard to plaintiff's complaint of retaliation against Sheriff Stolle, upon his election, and as was his prerogative under Virginia law, Sheriff Stolle chose not to appoint plaintiff to his staff. *See U.S. v. Gregory*, 871 F.2d 1239, 1245 (4th Cir. 1989) (citing *Whited v. Fields*, 581 F. Supp. 1444, 1453 (W.D.Va. 1984) ("A deputy sheriff has no expectation of appointment or reappointment outside of the personal relationship he has with the sheriff."). Further, Sheriff Stolle never employed plaintiff and cannot be found to have retaliated against someone whom he did not appoint.

However, even if retaliation against a non-appointee were possible, Sheriff Stolle has proffered legitimate nondiscriminatory reasons for his decision not to appoint plaintiff when he took office. Sheriff Stolle did not read or consider plaintiff's First Charge in making his decision; rather, he based his decision on plaintiff's performance deficiencies as reflected in her personnel records and the PSO investigations, the audit and otherwise, her failure to accept responsibility and refusal to be held accountable, her peers' negative reviews, and her hostile and unreceptive demeanor in two interviews.

In addition, the amount of time between plaintiff's First Charge in May 2009 and Sheriff Stolle's decision not to appoint her in December 2009 negates the inference of a causal connection between the two. *See Daniel v. Pickens County Sheriff's Dept.*, 2009 WL 394343 (D.S.C. 2009) (relying on *Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 657 (4th Cir. 1998)) (holding eleven months between deputy's protected activity and demotion negates a causal connection). Plaintiff cannot establish that her protected activity, a Charge filed against the VBSO during Sheriff Lanteigne's tenure, was the but-for cause of Sheriff Stolle's decision many months later.

Further, the *McDonnell Douglas* shifting burden sequence also applies to plaintiff's retaliation claims. Even assuming *arguendo* that plaintiff could establish a prima facie case of retaliation, she cannot prevail. The record establishes legitimate, nondiscriminatory reasons for the VBSO reorganization and plaintiff's transfer to Civil Process. The record also establishes that Sheriff Stolle had legitimate, non-discriminatory reasons for deciding not to appoint plaintiff. Plaintiff cannot establish pretext with regard to either decision. *See Hux v. City of Newport News, Virginia*, 451 F.3d 311 (4th Cir. 2006) (in failure to promote case, evidence of

non-discriminatory hiring justification included subjective criterion, poor interview performance and objective factors, including poor work performance and behavior problems).

Finally, plaintiff offers no evidence that her gender or race or her First Charge factored into Sheriff Stolle's decision; Sheriff Stolle's decisions to appoint two female Captains, and to appoint and promote an African-American female to Captain on the day he took office, underscore plaintiff's failure of proof. On the record before the Court, plaintiff cannot establish a retaliation claim resulting from her First Charge or from Sheriff Stolle's decision.

III. CONCLUSION

For the reasons set forth above, defendants Virginia Beach Sheriff's Office, Sheriff Kenneth Stolle, Marc F. Schuster, Elliot Ortiz and Helene Quick respectfully request that the Court enter summary judgment in their favor and dismiss plaintiff's claims, with prejudice.

VIRGINIA BEACH SHERIFF'S OFFICE
SHERIFF KENNETH STOLLE
MARC F. SCHUSTER
ELLIOT ORTIZ
HELENE QUICK

By:_____/s/_____
Of Counsel

Jeff W. Rosen, Esquire
Virginia Bar # 22689
Attorney for Virginia Beach Sheriff's Office,
Ken Stolle, Marc F. Schuster, Elliot Ortiz and Helene Quick
Pender & Coward
222 Central Park Avenue
Virginia Beach, Virginia 23462
(757) 490-6253
(757) 497-1914
jrosen@pendercoward.com

Lisa Ehrich, Esquire
Virginia Bar # 32205
Attorney for Virginia Beach Sheriff's Office,
Ken Stolle, Marc F. Schuster, Elliot Ortiz and Helene Quick
Pender & Coward
222 Central Park Avenue
Virginia Beach, Virginia 23462
(757) 490-6248
(757) 497-1914
lehrich@pendercoward.com

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2013 I will email a true copy of the foregoing *Memorandum of Law in Support of Motion for Summary Judgment* to the Clerk of Court using the CM/ECF system.

I hereby certify that I will mail the document by U.S. Mail to the following non-filer user:

Cassandra Lee
34649 Foxberry Road
Winchester, CA 92596
Pro se

/s/
Jeff W. Rosen, Esquire
Virginia Bar No. 22689
Attorney for Virginia Beach Sheriff's Office,
Ken Stolle, Marc F. Schuster, Elliot Ortiz and Helene Quicknts
Pender & Coward, P.C.
222 Central Park Avenue
Virginia Beach, VA 23462
(757) 490-3000/ (757) 497-1914
jrosen@pendercoward.com